

Senate Bill No. 896

CHAPTER 638

An act to add Section 247.1 to the Public Utilities Code, and to amend Section 41020 of the Revenue and Taxation Code, relating to telecommunications.

[Approved by Governor October 8, 2001. Filed with
Secretary of State October 9, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 896, Poochigian. Telecommunications services.

The United States Congress enacted the Mobile Telecommunications Sourcing Act for the purpose of establishing uniform nationwide sourcing rules for state and local taxation of mobile telecommunications services. In order to create a single, uniform sourcing rule, the federal act preempts, in part, state and local law.

Existing state law imposes taxes, surcharges, and fees on mobile telecommunications charges, including an emergency telephone surcharge.

This bill would amend the existing laws that impose taxes, surcharges, and fees, on mobile telecommunications services, including emergency telephone services, to reflect the changes made by the federal act.

This bill, in accordance with federal law, applies to customer bills issued on or after August 1, 2002.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds that the United States Congress has enacted the Mobile Telecommunications Sourcing Act for the purpose of establishing uniform nationwide sourcing rules for the state and local taxation of mobile telecommunications services. The federal act creates a uniform sourcing rule that was intended to be revenue-neutral among the states. In order to create a single, uniform sourcing rule, the federal act preempts, in part, state and local law. The Legislature desires to adopt implementing legislation with respect to certain tax laws enacted by this state, and to conform those tax laws to the federal uniform sourcing rule to the extent there is otherwise a conflict. By enacting this legislation, the Legislature is not, and is not intending to, enact any new taxes or to increase the tax rate or tax base of any tax.

SEC. 2. Section 247.1 is added to the Public Utilities Code, to read:

247.1. (a) The Mobile Telecommunications Sourcing Act (P.L. 106-252) was enacted for the purpose of establishing nationwide uniform sourcing rules for the imposition of state and local taxes, fees, and surcharges on mobile telecommunications services. In order to establish a single, uniform sourcing rule, the federal act partially preempted state and local law imposing taxes, fees, and surcharges on a mobile telecommunications services customer whose place of primary use is outside of the state in which the state and local taxes, fees, or surcharges are imposed.

(b) In accordance with the Mobile Telecommunications Sourcing Act, which is incorporated herein by reference, and notwithstanding Sections 280, 431, 739.3, 879, and 2881, the surcharges or fees under these sections do not apply to any charges for mobile telecommunications services billed to a customer where those services are provided, or deemed provided, to a customer whose place of primary use is outside this state. Mobile telecommunications services shall be deemed provided by a customer's home service provider to the customer if those services are provided in a taxing jurisdiction to the customer, and the charges for those services are billed by or for the customer's home service provider.

(c) For purposes of this section:

(1) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider, regardless of whether individual transmissions originate or terminate within the licensed service area of a home service provider.

(2) "Customer" means either (A) the person or entity that contracts with the home service provider for mobile telecommunications services, or (B) if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service. This paragraph applies only for the purpose of determining the place of primary use. The term "customer" does not include either (A) a reseller of mobile telecommunications service, or (B) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

(3) "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.



(4) “Licensed service area” means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(5) “Mobile telecommunications service” means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999.

(6) “Place of primary use” means the street address representative of where the customer’s use of the mobile telecommunications service primarily occurs, that must be:

(A) The residential street address or the primary business street address of the customer.

(B) Within the licensed area of the home service provider.

(7) (A) “Reseller” means a provider who purchases telecommunications services from another telecommunications service provider and then resells the services, or uses the services as a component part of, or integrates the purchased services into a mobile telecommunications service.

(B) “Reseller” does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider’s licensed service area.

(8) “Serving carrier” means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider’s or reseller’s licensed area.

(9) “Taxing jurisdiction” means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

SEC. 3. Section 41020 of the Revenue and Taxation Code is amended to read:

41020. (a) A surcharge is hereby imposed on amounts paid by every person in the state for intrastate telephone communication service in this state commencing on July 1, 1977.

(b) The surcharge imposed shall be at the rate of one-half of 1 percent of the charges made for such services to and including November 1, 1982, and thereafter at a rate fixed pursuant to Article 2 (commencing with Section 41030).

(c) The surcharge shall be paid by the service user as hereinafter provided.

(d) In accordance with the Mobile Telecommunications Sourcing Act (P.L. 106-252), which is incorporated herein by reference, the surcharge imposed under this section does not apply to any charges for mobile



telecommunications services billed to a customer where those services are provided, or deemed provided, to a customer whose place of primary use is outside this state. Mobile telecommunications services shall be deemed provided by a customer's home service provider to the customer if those services are provided in a taxing jurisdiction to the customer, and the charges for those services are billed by or for the customer's home service provider.

(e) For purposes of this section:

(1) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider, regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(2) "Customer" means (A) the person or entity that contracts with the home service provider for mobile telecommunications services, or (B) if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service. This paragraph applies only for the purpose of determining the place of primary use. The term "customer" does not include (A) a reseller of mobile telecommunications service, or (B) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

(3) "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(4) "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(5) "Mobile telecommunications service" means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999.

(6) "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, that must be:

(A) The residential street address or the primary business street address of the customer.

(B) Within the licensed service area of the home service provider.

(7) (A) "Reseller" means a provider who purchases telecommunications services from another telecommunications service



provider and then resells the services, or uses the services as a component part of, or integrates the purchased services into, a mobile telecommunications service.

(B) “Reseller” does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider’s licensed service area.

(8) “Serving carrier” means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider’s or reseller’s licensed area.

(9) “Taxing jurisdiction” means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

SEC. 4. In conformity with the federal Mobile Telecommunications Sourcing Act, this bill applies only to customer bills issued on or after August 1, 2002.

